

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Richmond Division)**

SAMUEL A. BUTTARI, SR. AND JAMIE MCCANN, CO-ADMINISTRATORS
OF THE ESTATE OF RYAN DYLAN BUTTARI, DECEASED,,

Plaintiff,

v.

Case No.: 3:21-cv-00070-DJN

MICHAEL EVERETTE,

AND

M AND C TRANSFER, LLC,

AND

88 FREIGHT, LLC,

Defendants.

AMENDED COMPLAINT

TO THE HONORABLE JUDGES
OF THE AFORESAID COURT:

COUNT I

COMES NOW, the plaintiffs, Samuel A. Buttari, Sr. and Jamie McCann, Co-Administrators of the Estate of Ryan Dylan Buttari, deceased, by counsel, and moves this Honorable Court for a Judgment and Award of Execution against the defendants, Michael Everette, M and C Transfer, LLC, and 88 Freight, LLC, jointly and severally, in the sum of FIFTEEN MILLION DOLLARS, (\$15,000,000.00), representing compensatory damages for the following reasons, to-wit:

1. Plaintiffs qualified and were duly appointment Administrators of the Estate of Ryan Dylan Buttari, deceased, by the Circuit Court of Sussex County on November 30, 2020, and a copy of their Certificate of Qualification is attached hereto, incorporated herein by this reference, and marked as Exhibit A, and;

2. That on or about Saturday, September 26, 2020, at approximately 10:50 a.m., the plaintiffs' decedent, Ryan Dylan Buttari, was a passenger in a 1994 Ford Ranger Super Cab pick-up truck headed in a northerly direction on I-95 at or near Exit 51, and;

3. That at the same time, place and date, defendant, Michael Everette, was operating a 2007 Peterbilt 387 tractor trailer, at the request and benefit of defendant, M and C Transfer, LLC and the defendant, Michael Everette, operated said vehicle as an agent and employee for defendant, M and C Transfer, LLC, by and with defendant, M and C Transfer, LLC permission and within the scope of defendant Michael Everette's authority and employment, headed in a northerly direction on I-95 at or near Exit 51, and;

4. That at the same time, place and date, defendant, Michael Everette, was operating a 2007 Peterbilt 387 tractor trailer, at the request and benefit of defendant, 88 Freight, LLC, and the defendant, Michael Everette, operated said vehicle as an agent and employee for defendant, 88 Freight, LLC, by and with defendant, 88 Freight, LLC's permission and within the scope of defendant Michael Everette's authority and employment, headed in a northerly direction on I-95 at or near Exit 51, and;

5. That on or about September 24, 2020, Wendy Butterick, an employee of defendant, 88 Freight, LLC, asked Michael Everette to complete a "New Carrier setup" to haul freight for, or on behalf, of 88 Freight, LLC, and;

6. That on or about September 24, 2020, Wendy Butterick, an employee of defendant, 88 Freight, LLC, asked Michael Everette to complete a “New Carrier setup” to haul freight for, or on behalf, of 88 Freight, LLC using an 88 Freight, LLC e-mail address and with a signature line reading “88 Freight, LLC,” and;

7. That on or about September 25, 2020, Wendy Butterick, an employee of defendant, 88 Freight, LLC arranged for Michael Everette to haul a load for and on behalf of 88 Freight, LLC on September 26, 2020, and;

8. That on or about September 25, 2020, Wendy Butterick, an employee of defendant, 88 Freight, LLC instructed and dispatched Michael Everette to haul said load using an 88 Freight, LLC e-mail address and a signature line reading “88 Freight, LLC,” and;

9. That at all times relevant hereto, the defendants, Michael Everette and M & C Transfer, LLC were hauling a load on behalf of 88 Freight, LLC and under dispatch from 88 Freight, LLC, and;

10. That the defendant, 88 Freight, LLC instructed and commanded Michael Everette that all communications regarding the load hauled on September 26, 2020, were to be done using an 88 Freight, LLC e-mail address and a telephone number assigned to 88 Freight, LLC, and;

11. That at all times relevant hereto, the defendant 88 Freight, LLC controlled the means and methods of defendants, Michael Everette and M and C Transfer, LLC’s transport of loads on its behalf, including, but not limited to, requiring Michael Everette to use specific chains and binders to secure a load, taking photographs of said load and sending it to an 88 Freight, LLC e-mail address or phone number before Michael Everette could start his trip, reserving the right to fine and/or withhold payment to Michael Everette if the load was not stacked or secured properly,

reserving the right to fine and/or withhold payment to Michael Everette if Michael Everette was late, and;

12. That the defendant, Michael Everette, under the scope of employment with defendants, M and C Transfer, LLC and 88 Freight, LLC, operated his vehicle in a careless, reckless, and negligent manner, so as to strike a 2015 Ford tow truck and a 2012 Ford F-250 pickup truck and then strike the rear of the vehicle in which the plaintiff was a passenger and several other vehicles, and;

13. That the defendant, Michael Everette, operated his vehicle in a careless, reckless, and negligent manner so as to cause the death of the plaintiffs' decedent, Ryan Dylan Buttari, and;

14. That by reason of and as a direct and proximate result of the negligence of the defendant, Michael Everette, the plaintiffs' decedent was caused to suffer fatal injuries and died as a result of the defendant's negligence on September 26, 2020, and;

15. That the plaintiffs' decedent at the time of his death was 6 years of age and was in good health, and;

16. The plaintiffs' decedent died intestate and is survived by the following statutory beneficiaries:

Samuel A. Buttari, Sr. – father

Jamie McCann – mother

Shawn McCann, age 26 – brother

Steven McCann, age 23 - brother

Jessie McCann, age 22 – brother

Samuel Buttari, Jr., age 20 – brother

Jonathan Buttari, age 19 – brother

Samantha Buttari, age 5 - sister

By reason of the death of the decedent, said beneficiaries have sustained financial and pecuniary loss as a result of the death of the plaintiffs' decedent and have suffered severe mental anguish at the loss of his company and counsel.

Pursuant to §8.01-52 of the Code of Virginia plaintiffs claim damages against the defendants, Michael Everette, M and C Transfer, LLC, and 88 Freight, LLC, jointly and severally, in the amount of FIFTEEN MILLION DOLLARS (\$15,000,000.00) for compensatory damages on behalf of the decedent's beneficiaries, including but not limited to the following:

- (a) The loss of the life of the plaintiff's decedent
- (b) Sorrow, mental anguish, and solace, including society, companionship, comfort, guidance, kindly offices and advice of the plaintiffs' decedent
- (c) Compensation for reasonably expected loss of services, Protection, care and assistance provided by the Plaintiffs' decedent
- (d) Funeral expenses of plaintiffs' decedent
- (e) For punitive damages for the gross, willful, wanton, and Reckless conduct of the defendant demonstrating a Conscious disregard for the safety of others.

17. That by reason of and as a direct and proximate result of which the plaintiffs have sustained damages in the extent of FIFTEEN MILLION DOLLARS (\$15,000,000.00).

COUNT II

COMES NOW, the plaintiffs, Samuel A. Buttari, Sr. and Jamie McCann, Co-Administrators of the Estate of Ryan Dylan Buttari, deceased, by counsel, and moves this Honorable Court for a Judgment and Award of Execution against the defendants, Michael Everette, M and C Transfer, LLC, and 88 Freight, LLC, jointly and severally, in the sum of

THREE HUNDRED FIFTY THOUSAND DOLLARS, (\$350,000.00), representing punitive damages for the following reasons, to-wit:

1. That all the allegations contained in Count I are incorporated herein and made a part hereof by this reference.

2. That the defendant, Michael Everette, operated his automobile with gross negligence and in such a willful and wanton manner as to show a conscious disregard for the rights and safety of others and he thereby caused the death of the plaintiffs' decedent, and;

3. That on September 26, 2020, a digital overhead sign on northbound Interstate 95, approximately 10 miles before the subject crash, warned the defendant, and other motorists, of an earlier crash, stopped traffic, and lane blockages.

4. That on September 26, 2020, a second digital overhead sign on northbound Interstate 95, approximately 4 to 5 miles, before the subject crash warned the defendant, and other motorists, of an earlier crash, stopped traffic, and lane blockages.

5. Both of the aforementioned digital signs were working and plainly visible to the defendant as he traveled northbound on Interstate 95 on September 26, 2020.

6. Said gross negligence and willful and wanton conduct of the defendant, Michael Everette, includes, but is not limited to, ignoring the two digital overhead signs, failing to decrease his speed, and pay attention to traffic ahead of him. As a result, the defendant crashed into seven vehicles, which were stopped or slowing for traffic, at full speed. This was a proximate cause of the fatal injury to the plaintiffs' decedent, and;

7. As a direct and proximate cause of the gross, willful, and wanton negligence of the defendant, Michael Everette, the plaintiffs' decedent lost his life and the plaintiffs should recover therefore punitive damages in the sum of THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000.00), in addition to the compensatory damages in this action.

WHEREFORE, the plaintiffs prays that they be granted a judgment against the defendants, Michael Everette, M and C Transfer, LLC, and 88 Freight, LLC, jointly and severally, in the

amount of FIFTEEN MILLION DOLLARS (\$15,000,000.00) for compensatory damages and that the plaintiffs be granted a judgment against the defendants, Michael Everette, M and C Transfer, LLC, and 88 Freight, LLC, jointly and severally, in the amount of THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000.00) for punitive damages for the negligence aforesaid.

A trial by jury is demanded.

SAMUEL A. BUTTARI, SR. AND JAMIE MCCANN,
CO-ADMINISTRATORS OF THE ESTATE OF RYAN
DYLAN BUTTARI, DECEASED

By /s/ _____
Counsel

Kelly B. Martin, Esquire (VSB #77029)
Tronfeld West & Durrett
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Richmond, Virginia 23230
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(804) 355-0226 – Facsimile
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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of February, 2021, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Stanley P. Wellman, Esquire
B. Patrick O'Grady, Esquire
HARMAN CLAYTOR CORRIGAN & WELLMAN
P.O. Box 70280
Richmond, VA 23255
Counsel for Michael Everette and M and C Transfer LLC

Lindsey A. Lewis, Esquire
FRANKLIN & PROKOPIK
Vistas II
5516 Falmouth Street, Suite 203
Richmond, VA 23230
Counsel for 88 Freight LLC

/s/
Kelly B. Martin

**CERTIFICATE/LETTER OF QUALIFICATION -
FOR PROSECUTION OR DEFENSE OF CIVIL ACTION**
COMMONWEALTH OF VIRGINIA
VA. CODE §§ 64.2-454

Court File No. CWF20-146

Sussex County Circuit Court

I, the duly qualified clerk/deputy clerk of this Court, **CERTIFY** that on 30 November 2020
DATE

Samuel A. Buttari, Sr., and Jamie McCann
NAME(S) OF PERSON(S) QUALIFYING

duly qualified in this Court, under the provisions of Virginia Code § 64.2-454, as administrator of the estate of

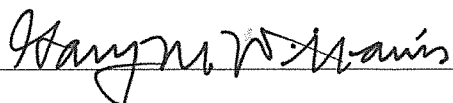
Ryan Dylan Buttari, deceased, solely for the purpose of prosecution
or defense of a civil action for personal injury and/or death by wrongful act.

The powers of the fiduciary(ies) named above continue in full force and effect.

\$ 100.00 bond has been posted.

Given under my hand and the seal of this Court on

30 November 2020
DATE

, Clerk

by _____, Deputy Clerk

